Appendix A.

U.S. Department of Labor
Bureau of Employees' Compensation
Fourth Compensation District

COMPENSATION ORDER
REJECTION OF CLAIM

Case No. 2191-72

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Earl M. Owens,

Claimant,

v.

Bethlehem Steel Corp.,

Employer and Self-insurer.

A formal hearing in two sessions was held with respect to this claim on 17 September 1963 and 9 October 1963, and a compensation order was thereafter filed in the office of the Deputy Commissioner of the Fourth Compensation District on 20 December 1963 awarding claimant benefits for temporary total disability during the period 27 September 1962 to 25 November 1962, inclusive, and the matter was continued for consideration of further disability. The self-insured employer complied with said order and initiated action for review of said order by the United States District Court, and the United States District Court by order dated 27 August 1964 affirmed the above compensation order. The minutes of the hearings held on the above dates and the compensation order and the order of the United States District Court referred to above are by this reference made a part of this order. Such additional investigation with respect to the above entitled claim having been made as is considered necessary,

and a further hearing having been held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT

That as a result of the injury and subsequent surgery claimant has sustained a 25% anatomical impairment of his back; that following his return to work for the above employer in November 1962 claimant engaged in essentially the same employment activities as a test engineer that he had engaged in prior to his injury of 6 June or 9 June 1961; that his earnings in said employment subsequent to his return to work in November 1962 have been greater than his earnings prior to injury; that he has experienced pain and physical difficulty in performing some of his employment activities subsequent to his return to work in November 1962; that claimant has considerable specialized experience and training in the occupational field of test engineer, which he has engaged in both prior and subsequent to the injury; that the work activity claimant performs is essentially light in nature and that up to the present time he has demonstrated a capability of performing all the tasks connected therewith, even though some of these tasks have resulted in pain and difficulty upon performance of same; that claimant has not up to the present time demonstrated that he has sustained any injury-related loss of wage-earning capacity subsequent to his return to work in November 1962; that claimant has sustained a serious anatomical impairment of his back as a result of the injury and subsequent surgery, and there exists a reasonable probability that his injury-related condition may worsen.

DETERMINATION

Upon the foregoing facts it is ordered by the Deputy Commissioner:

(1) That the claim for permanent partial compensation benefits commencing 26 November 1962 is hereby rejected, since claimant has not up to the present time demonstrated that he has sustained any partial loss of wage-earning capacity as a result of his injury-related condition;

(2) That the matter is hereby continued for consideration of further disability.

Given under my hand and filed at Baltimore, Maryland, this 11th day of March 1965.

JOHN P. TRAYNOR,
Deputy Commissioner,
Fourth Compensation District.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order was sent by registered mail to the Claimant and to the Employer and Self-insurer at the last known address of each as follows:

Name	Address
Earl Owens	8216 Edwill Ave., Baltimore, Md. 21206
Bethlehem Steel Corp.	1101 Key Highway, Baltimore, Md. 21230
Bethlehem Steel Corp.	Sparrows Point Yard, Baltimore, Md. 21219

Mailed: 11 March 1965

JOHN P. TRAYNOR,
Deputy Commissioner.

Copy to:

Atty. Joseph Lentz
36 Equitable Bldg., Baltimore, Md. 21202

Atty. Philip T. McCusker
900 First National Bank Bldg., Balto., Md. 21202

Bureau of Employees' Comp.....Washington, D.C. 20211

Appendix A

U.S. Department of Labor
Bureau of Employees' Compensation
Fourth Compensation District

COMPENSATION ORDER
REJECTION OF CLAIM

Case No. 2191-72

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Earl M. Owens,

Claimant,

vs.

Bethlehem Steel Corp.,

Self-Insured Employer.

Such investigation with respect to the above-entitled claim having been made as is considered necessary, and a hearing having been held in accordance with law, and thereafter a Compensation Order, dated March 11, 1965, having been issued and an appeal from said Compensation Order having been filed in the United States District Court for the District of Maryland, and that thereafter the District Court on November 29, 1966, issued an order remanding the case to the Deputy Commissioner to take further action in accordance with the instructions contained in said order; that Compensation Order dated March 11, 1965, and all documents referred to therein are made a part of this Compensation Order by reference; that the Decision and Order of the United States District Court, dated November 29, 1966, is hereby made a part of this Order by reference, the Deputy Commissioner makes the following:

FINDINGS OF FACT

That pursuant to the instructions contained in the United States District Court Order dated November 29, 1966, the Deputy Commissioner indicates that he meant (B) as referred to in the District Court Order.

Upon the foregoing facts the Deputy Commissioner makes the following:

DETERMINATION

That the claim for permanent partial compensation benefits commencing 26 November, 1962, is again rejected for the reason that claimant has not met the burden of showing that he has sustained any loss of wage-earning capacity as a result of his injury-related condition.

Given under my hand and filed at Baltimore, Maryland, this 21st day of April, 1967.

JOHN P. TRAYNOR,
Deputy Commissioner,
Fourth Compensation District.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order, Rejection of Claim, was sent by registered mail to the claimant, the claimant's attorney, the employer, and the attorney for the employer, as follows:

Name	Address
Mr. Earl Owens	8216 Edwill Ave., Baltimore, Md. 21206
Joseph Lentz, Attorney	36 Equitable Bldg., Baltimore. Md. 21202
Bethlehem Steel Corp.	1101 Key Highway, Baltimore, Md. 21230
Bethlehem Steel Corp.	Sparrows Point Yard, Baltimore, Md. 21219
Philip T. McCusker, Attorney	900 1st Nat'l Bank Bldg., Baltimore, Md. 21202

By Regular Mail:

Mr. John J. Newman
Assistant Director
Bureau of Employees' Compensation
U.S. Department of Labor
Washington, D.C. 20211

JOHN P. TRAYNOR,
Deputy Commissioner,
Fourth Compensation District

Mailed April 21, 1967

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Admiralty No. 4810

Earl M. Owens,

v.

John P. Traynor, Deputy Commissioner,
U.S. Department of Labor,
and
Bethlehem Steel Company

Filed: November 29, 1966.

Joseph F. Lentz, Jr., of Baltimore, Maryland, for complainant.

Thomas J. Kenney, United States Attorney, and Arthur K. Crocker, Assistant United States Attorney, of Baltimore, Maryland, for Deputy Commissioner.

Joseph H. Young, of Baltimore, Maryland, for Bethlehem Steel.

Thomsen, Chief Judge.

This is a proceeding under 33 U.S.C.A. 921 to review an order entered on 11 March 1965.

At all pertinent times claimant has been employed by Bethlehem Steel Sparrows Point Yard as a test engineer. His duties require relatively light physical activity, such as standing, occasionally climbing ships' ladders, and using small instruments to take readings on the machinery being tested. He does not operate the machinery.

In June 1961, while carrying an instrument weighing

80 lbs., claimant slipped and fell to the deck of a vessel, causing an injury which produced only trivial initial symptoms, but resulted in a herniation of the fourth lumbar intervertebral disc, which required a bilateral lumbar dissectomy in September 1962. In December 1963 claimant received an award of compensation for temporary total disability from 27 September 1962 to 23 November 1962; the order concluded with the statement that "the matter is hereby continued for consideration of further disability". That order was affirmed by this Court on 27 August 1964, in a proceeding brought by the employer.

Meanwhile claimant had returned to his regular work, which he was able to perform satisfactorily. His average weekly earnings increased from $139.75 at the time of the accident in 1961 to $169.00 in February 1965, when an additional hearing was held to consider the possibility of an award for permanent partial disability. After that hearing the Deputy Commissioner entered the order of 11 March 1965, now under review, holding:

"FINDINGS OF FACT

"That as a result of the injury and subsequent surgery claimant has sustained a 25% anatomical impairment of his back; that following his return to work for the above employer in November 1962 claimant engaged in essentially the same employment activities as a test engineer that he had engaged in prior to his injury of 6 June or 9 June 1961; that his earnings in said employment subsequent to his return to work in November 1962 have been greater than his earnings prior to injury; that he has experienced pain and physical difficulty in performing some of his employment activities subsequent to his return to work in November 1962; that claimant has considerable specialized experience and training in the occupational field of test engineer, which he has engaged in both prior and subsequent to the injury; that the work activity claimant performs is essentially light in nature and that up to the present time he has demonstrated a capability of performing all

the tasks connected therewith, even though some of these tasks have resulted in pain and difficulty upon performance of same; that claimant has not up to the present time demonstrated that he has sustained any injury-related loss of wage-earning capacity subsequent to his return to work in November 1962; that claimant has sustained a serious anatomical impairment of his back as a result of the injury and subsequent surgery, and there exists a reasonable probability that his injury-related condition may worsen.

"DETERMINATION

"Upon the foregoing facts it is ordered by the Deputy Commissoner:

"(1) That the claim for permanent partial compensation benefits commencing 26 November 1962 is hereby REJECTED, since claimant has not up to the present time demonstrated that he has sustained any partial loss of wage-earning capacity as a result of his injury-related condition;

"(2) That the matter is hereby continued for consideration of further disability."

Claimant seeks review of that order on the grounds that the findings of the Deputy Commissioner are not supported by substantial evidence and are not in accordance with the law, in that (1) there is no substantial evidence to support the finding that claimant has not demonstrated a loss of wage-earning capacity as a result of his injury, and (2) the Deputy Commissioner does not have the power to continue the matter for further consideration.

The employer takes the position that the findings of fact and determination paragraph (1) are proper, and that determination paragraph (2) is either proper or surplusage, depending upon how that paragraph is construed.

Reviewing an order, the Court must determine whether the Deputy Commissioner has properly construed the statute, if such a question is presented. In most cases,

however, the only or principal issue is whether there is substantial evidence in the record as a whole to support the findings and conclusions. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The first question to be decided in this case is whether the record sustains the determination of the Deputy Commissioner that claimant has not demonstrated that he has sustained any partial loss of wage-earning capacity as a result of his injury-related condition.

Section 908(c) deals with compensation for permanent partial disability. Paragraphs (1) to (20) of section 908 (c) set out a schedule of compensation for specified disabilities. Paragraph (21) provides:

> "Other cases: In all other cases in this class of disability the compensation shall be 66-2/3 per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest."

"Disability" is defined by section 902(10) as follows:

> " 'Disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."

As this Court noted in *Miller v. O'Hearne*, D.Md., 181 F. Supp. 105, 107 (1960): "The statute with which we are dealing does not permit the award of compensation for permanent partial disability, aside from scheduled disabilities provided for in sec. 908 (c)(1) to (20), unless there has been some loss of wage earning capacity. Sec. 908(c)(21) and (h)."

Section 908(h) provides:

> "The wage-earning capacity of an injured employee in cases of partial disability under sub-division (c)

(21) of this section or under sub-division (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: *Provided, however,* That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future."

It is true that an employee's actual earnings after he returns to work do not conclusively prove his wage-earning capacity. The employer may be willing to allow the claimant to return to his old job although the claimant is unable to do all of the work connected therewith and would be handicapped in obtaining another job by his disability. On the other hand, the claimant may be earning less than he did before the accident not because of any disability resulting from the accident but because of economic conditions or some infirmity not caused or aggravated by the injury. *John W. McGrath Corp. v. Hughes,* 2 Cir., 289 F.2d 403 (1961); *Bethlehem Steel Co., Inc., Shipbuilding Div. v. Traynor,* D.Md., 239 F. Supp. 749 (1965), and cases cited at pp. 750-751.

In the instant case there is substantial evidence to support the conclusion that claimant has not shown that his current wages do not accurately reflect his wage-earning capacity; the record clearly shows that claimant has been "earning", his increased wages. As he himself testified at the hearing, his duties involve brain rather than brawn, and he has "never turned down five minutes' worth of work".[1]

[1] Moreover, he has been engaging in his customary avocations, including golf, albeit with some paid.

Claimant contends that the Deputy Commissioner was bound to make an Award because he found "anatomical impairment" and a "reasonable probability that the condition may worsen". But a Deputy Commissioner is not required or authorized to make such an award under sec. 908(c)(21) merely because there is some anatomical impairment. Anatomical impairment and industrial disability must be distinguished. Section 902(10) defines "disability" as an "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment". As the Second Circuit said in *John W. McGrath Corp. v. Hughes*, 289 F.2d at 405, [T]his definition clearly imposes upon the Deputy Commissioner and the reviewing courts the duty to evaluate the extent of a claimant's disability in economic rather than medical terms."

The determination of the Deputy Commissioner that claimant "has not up to the present time demonstrated that he has sustained any partial loss of wage-earning capacity as a result of his injury-related condition" is supported by substantial evidence, and would ordinarily require that the order denying compensation for permanent partial disability be affirmed. In this case, however, that determination was coupled with determination paragraph (2): "That the matter is hereby continued for consideration of further disability". The construction and validity of the latter paragraph must be considered in the light of section 922, which provides in pertinent part:

> "Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such

section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. * * *"

If determination paragraph (1) stood alone, unaccompanied by paragraph (2), it would be clear that the Deputy Commissioner intended to reject the claim for permanent partial disability because he concluded that claimant had not met the burden of showing that he had sustained *any* loss of wage-earning capacity. But paragraph (2) apparently seeks to keep the matter open for an indefinite or unspecified period, and may or may not have been intended to qualify the determination made in paragraph (1).

(A) If the Deputy Commissioner meant that claimant had not met the burden of showing that he had sustained *any* loss of wage-earning capacity, but that facts might develop *within* the one year limitation period which would show either a change in conditions or a mistake in a determination of fact, the order would be proper and should be affirmed. Paragraph (2) would then be surplusage, since it would state the effect of section 922.

(B) If the Deputy Commissioner meant that claimant had not met the burden of showing that he had sustained *any* loss of wage-earning capacity, but that if facts showing either a change in conditions or a mistake in a determination of fact should develop or be brought to his attention *after* the expiration of the one year period, he might then make an award, paragraph (2) so construed would not be authorized by the statute; but the rejection of the claim for permanent partial disability would be required by the statute and should be affirmed.

(C) If the Deputy Commissioner meant that claimant probably has sustained some loss of wage-earning capacity which cannot be determined with accuracy at this time but which might be determined with accuracy more than one year in the future, a difficult problem would be presented. If, under those circumstances, sections 908(c)(21) and 922 should be construed to require a disallowance of any compensation for permanent partial disability at

this time and no right to reopen and make an award after expiration of the limitation period of one year, even though a serious loss of wage-earning capacity due to the injury should thereafter be demonstrable, the result would be unfair to claimant. On the other hand, if those sections should be construed to permit a substantial award for permanent partial disability at this time based upon speculation as to what may happen in the future, even though no loss of wage-earning capacity has yet been shown, the result would be unfair to the employer.

The case will be remanded to the Deputy Commissioner, so that he can indicate clearly whether he meant (A), (B) or (C), above, or whether he meant something else. If he meant (A) or (B), he should again reject the claim, and the right to reopen will be controlled by the provisions of section 922. If he meant (C), he should state under what section he considers he has the right to order that the matter be "continued for consideration of further disability", as provided in paragraph (2) of the Determination. If he meant something other than (A), (B) or (C), he should state his findings and conclusions and dispose of the case as those findings and conclusions dictate.

ROSZEL C. THOMSEN,
Chief Judge, U.S. District Court.

SUPPLEMENTARY OPINION AND ORDER FILED OCTOBER 27, 1967

Pursuant to the opinion filed herein on November 29, 1966, the Deputy Commissioner entered an order, dated April 21, 1967, wherein, after appropriate recitals, he stated that "the Deputy Commissioner makes the following:

"FINDINGS OF FACT

"That pursuant to the instructions contained in the United States District Court Order dated November 29, 1966, the Deputy Commissioner indicates that he meant (B) as referred to in the District Court Order.

"Upon the foregoing facts the Deputy Commissioner makes the following:

"DETERMINATION

"That the claim for permanent partial compensation benefits commencing 26 November 1962, is again rejected for the reason that claimant has not met the burden of showing that he has sustained any loss of wage-earning capacity as a result of his injury-related condition."

Claimant thereupon filed a supplemental complaint for review of the compensation order. The case was set for further argument and counsel have been heard.

The order of the Deputy Commissioner dated April 21, 1967, answers the question raised by the former opinion of this Court, and answers it in such a way that the claim for permanent partial disability benefits must be denied. Counsel for claimant does not deny that this result is required by the former opinion of this Court, but asks the Court to review the conclusions reached in that opinion. The Court has done so, and adheres to its previous rulings.

The order of the Deputy Commissioner denying the claim for permanent partial disability benefits must be and it is hereby affirmed.

ROSZEL C. THOMSEN,
Chief Judge, U.S. District Court.

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12,096

Earl M. Owens,

Appellant,

versus

John P. Traynor, Deputy Commissioner,
U.S. Department of Labor, and Bethlehem Steel Company,

Appellees.

Filed June 19, 1968

Appeal from the United States District Court for the District of Maryland, at Baltimore.

ROSZEL C. THOMSEN,
District Judge.

(Argued May 6, 1968. Decided June 19, 1968.)

Before Haynsworth, Chief Judge, and Boreman and Craven, Circuit Judges.

Joseph F. Lentz, Jr., for Appellant; George M. Lilly, Attorney, Department of Labor, (Charles Donahue, Solicitor of Labor, Alfred H. Myers, Frank V. McDermott, Jr., Attorneys, Department of Labor, Stephen H. Sachs, United States Attorney, and Alan B. Lipson, Assistant United States Attorney, on brief) for Appellee Traynor, and Joseph H. Young (Jesse Slingluff on brief) for Appellee Bethlehem Steel Company.

PER CURIAM:

Earl M. Owens, a test engineer for Bethlehem Steel Company, fell while at work, sustaining a back injury. The Deputy Commissioner of the Department of Labor entered a compensation order awarding him benefits under the Longshoremen's and Harbor Workers' Compensa-

tion Act, 33 U.S.C. § 901, et seq., for temporary total disability for a two-month period during which a bilateral lumbar dissectomy was performed. Owens then applied for a permanent partial disability award based on an alleged loss of wage-earning capacity. This claim was rejected by the Deputy Commissioner, who, in a second paragraph of the order, curiously provided that "the matter is hereby continued for consideration of further disability."

On appeal, the District Court, noting the provision of the Act that "the deputy commissioner may * * * at any time prior to one year after the rejection of a claim review a compensation case in accordance with the procedure prescribed * * * and * * * issue a new compensation order * * *,"[1] remanded the case for a clarification of the equivocal language of the order.[2]

The Deputy Commissioner then filed a second order in which he again rejected Owens' claim for permanent partial disability for the reason that no present loss of wage-earning capacity had been shown and, also, stated that by the language in question in his earlier order, he had intended to allow for a reconsideration of an award after the expiration of the one year period. This concededly ineffectual attempt to provide for an extrastatutory continuation has no effect on the rejection of Owens' claim for permanent partial disability.[3]

There is ample evidence to support the Deputy Commissioner's findings of fact, including his ultimate finding that no loss of wage-earning capacity has been shown. The claimant experiences some pain in his back when golfing or shoveling snow, but he is able to perform all phases of his relatively sedentary engineering duties. In fact, his postaccident earnings substantially exceed those before.

Affirmed.

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[1] 33 U.S.C. § 922.

[2] Owens v. Traynor, D. Md., 274 F. Supp. 770.

[3] We do not reach, on this record, the question of whether the Commissioner may, in a given case, make a finding of partial permanent disability and at the same time postpone beyond the one-year period the precise determination of its extent.

Appendix D—Statutes

33 U.S.C.A. 902

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment

(13) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.

33 U.S.C.A. 908

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66-2/3 per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section respectively and shall be paid to the employee, as follows:

(21) Other cases: In all other cases in this class of disability the compensation shall be 66-2/3 per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

33 U.S.C.A. 908

(h) The wage-earning capacity of an injured employee in cases of partial disability under subdivisions (c) (21) of this section or under subdivision (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning

capacity: *Provided, however,* That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

33 U.S.C.A. 919

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail or by certified mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order reject the claim or make an award in respect of the claim.

(e) The order rejecting the claim or making the award (referred to in this Act as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail or by certified mail to the claimant and to the employer at the last known address of each.

33 U.S.C.A. 921

21. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted

as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the United States District Court for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

33 U.S.C.A. 922

22. Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim review a compensation case in accordance with the procedure prescribed in respect of claims in section 19, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or de-

crease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary.